

APPENDIX A

INITIAL REGULATORY FLEXIBILITY ANALYSIS

1 As required by the Regulatory Flexibility Act (RFA),¹ as amended, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) concerning the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM).² Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM in paragraph 83. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.³ In addition, the Notice and IRFA will be published in the Federal Register.⁴

A. Need for, and Objectives of, the Proposed Rules

2 The Commission initiated this comprehensive review of the reporting requirements imposed on U.S. carriers providing international telecommunications services. The Commission believes that the proposals contained in the NPRM will make it easier for carriers, both small and large, to provide the information required by the rules. In addition, section 11 of the Telecommunications Act of 1996 directs the Commission to undertake, in every even-numbered year beginning in 1998, a review of certain regulations issued under the Communications Act of 1934, as amended.⁵

3 The objective of this proceeding is to improve the reporting requirements imposed on carriers providing international telecommunications services in sections 43.61 and 43.82 of the Commission's rules.⁶ Specifically, the NPRM proposes to simplify, consolidate, and revise the annual traffic and revenue reporting requirements and the circuit-status reporting requirements. Also, the NPRM proposes to eliminate the rule that requires carriers to file reports regarding the division of international toll communication charges.

4 Currently, section 43.61 requires that all international telecommunications carriers file an annual report of their traffic and revenues. In addition, section 43.61 sets forth additional reporting requirements for specific carriers that meet the criteria set forth in the rule. Under section 43.82, facilities-based common carriers providing international telecommunications services must file an annual report on the status of their circuits. The information derived from

¹ See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² We note that we may not certify this proceeding under 5 U.S.C. § 605, because our action will not have a significant economic effect on a substantial number of small entities (as discussed).

³ See 5 U.S.C. § 603(a).

⁴ *Id.*

⁵ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁶ 47 C.F.R. §§ 43.61, 43.82.

the international revenue and traffic report and circuit-status report is critical in understanding the international telecommunications market. These reports are the only source of publicly available information of this nature.

5. The information obtained from these reports is used extensively by the Commission, the industry, other government agencies, and the public. The Commission uses the information to evaluate applications for international facilities, track market developments and the competitiveness of each service and geographical market to formulate rules and policies consistent with the public interest, monitor compliance with those rules and policies, and guard the competitive effect of its decisions on the market. The Commission also uses the information to identify those routes for which settlement rates are at a level low enough to permit relief from certain regulatory requirements, including the prohibition on the use of private lines for the provision of switched, basic services ("ISR"). Carriers use the information to track the balance of payments in international communications services and for market analysis purposes. Carriers and potential entrants use the information for, among other things, assessment of market opportunities and to monitor competition in markets. The Commission, along with other government agencies such as the Department of Justice, uses the information in merger analyses and negotiations with foreign countries. In addition, the information contained in the circuit-status report allows the Commission to comply with the statutory requirements of the Omnibus Budget Reconciliation Act of 1993.

B. Legal Basis

6. The NPRM is adopted pursuant to sections 1, 4(i) and (j), 11, 201-205, 211, 214, 219, 220, 303(r), 309, and 403 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 161, 201-205, 211, 214, 219, 220, 303(r), 309, and 403.

C. Description and Estimate of the Number of Small entities to Which the Proposals will Apply

7. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposals, if adopted.⁷ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁸ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁹ A small business concern is one that: (1) is independently owned and operated;

⁷ 5 U.S.C. § 603(b)(3)

⁸ 5 U.S.C. § 601(6)

⁹ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

(2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA)¹⁰

8 The proposals in the NPRM apply only to entities providing international common carrier services pursuant to section 214 of the Communications Act; entities providing domestic or international wireless common carrier services under section 309 of the Act; entities providing common carrier or non-common carrier satellite services under section 309 of the Act; and entities licensed to construct and operate submarine cables under the Cable Landing License Act on a common carrier or non-common carrier basis. The Commission has not developed a small business size standard directed specifically toward these entities. However, according to SBA definitions, wired telecommunications carriers, cellular and other wireless providers, and telecommunications resellers would be considered small entities if they employ 1,500 employees or less.¹¹ The definition also considers satellite or other telecommunications providers as small entities if they have \$12.5 million or less in annual receipts.¹²

9 We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."¹³ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope.¹⁴ We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analysis and determinations in other, non-RFA contexts

10. The carriers required to file the traffic and revenue and circuit-status reports are both large and small entities. In the 2002 annual traffic and revenue report, 706 carriers reported that they provided international message telephone service (IMTS) on a pure resale basis.¹⁵ Pure resale providers resell the services of underlying U.S. facilities-based and facilities-resale carriers. Pure resale service is primarily provided by small businesses. For example, of the 706 carriers, 316 carriers had revenues less than \$10,000; 560 had revenues less than \$500,000; and 584 had revenues less than \$1 million.¹⁶ The report also shows that 56 U.S. facilities-based and facilities-resale carriers reported that they billed \$9.3 billion for IMTS service, \$988 million for

¹⁰ 15 U.S.C. § 632

¹¹ 13 C.F.R. § 121.201, NAICS codes 517110, 513322, and 51730

¹² *Id.* at code 517410

¹³ 15 U.S.C. § 632.

¹⁴ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small-business concern," which the RFA incorporates into its own definition of "small business." See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

¹⁵ See FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "2002 International Telecommunications Data" at page 1, Statistical Findings (March 2004). FCC website location <http://www.fcc.gov/wcb/jatd/intl.html>.

¹⁶ *Id.*

private line services, and \$113 million for miscellaneous services. These carriers would be considered non-small entities under the SBA definition.¹⁷

11. According to the 2002 Circuit-Status Report, 79 U.S. international facility-based carriers filed information pursuant to section 43.82.¹⁸ The report does not yield employee or revenue statistics, so it is impossible for us to determine how many carriers could be considered small entities. Although it is quite possible that a carrier could report a small amount of capacity and have significant revenues, we will consider those 79 carriers to be small entities at this time. In addition, of the 79 carriers filing the annual circuit-status report for 2002, there were at least 8 carriers that did not have any circuits in 2002.¹⁹

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

12. The NPRM proposes to retain the annual traffic and revenue reporting requirements and the circuit-status reporting requirements because the collection and public reporting of this information continues to be necessary in the public interest. The NPRM, however, proposes to simplify and clarify the reporting requirements to reduce the burdens for both small and large carriers. Because carriers currently are required to file annual traffic and revenue and circuit-status reports, the proposals contained in the NPRM will not impose any significant economic burden on small carriers. The information contained in the proposed reporting requirements is the same information that the carriers collect and maintain during the routine course of business. The NPRM contains a staff recommendation on the proposed reporting requirements, including eight proposed schedules that show the specific information that carriers would be required to report and how they would report it. The proposed reporting requirements are described below. However, because the Commission may change the reporting proposed in the NPRM based on comments received in this proceeding, the schedules may also change.

13. Schedule 1 contains a proposed new generic report. This report would be a one-page form that international section 214 authorization holders would be required to file annually. The generic form would require a carrier to provide basic information about its international section 214 authorization. Specifically, the carrier would be required to provide its name, its Form 499-A identification number,²⁰ its Commission Registration System (CORES)

¹⁷ See 13 C.F.R. § 121.201, NAICS Code at Subsector 517 – Telecommunications.

¹⁸ See *International Bureau Releases 2002 Year-End Circuit Status Report for U.S. Facilities-Based International Carriers, Capacity Use Shows Modest Growth*, rel. Dec. 24, 2003. The report is available on the FCC website at <http://www.fcc.gov/ib/pd/pf/csmanual.html>.

¹⁹ *Id.*

²⁰ FCC Form 499-A is the Commission's Telecommunications Reporting Worksheet. All telecommunications carriers are required to file this form annually to calculate contributions to the universal service support mechanisms, as well as to the TRS Fund, the cost recovery for numbering administration, and the cost recovery for the shared costs of local number portability. In addition, the information is used by carriers to comply with the Commission's registration requirement for new and existing carriers providing interstate telecommunications service. See 47 C.F.R. §§ 52.1(b), 52.32(b), 54.711(a), 64.604(c)(4)(iii)(B), and 64.1195.

identification number,²¹ and a list of the international section 214 authorizations that it holds. In addition, the carrier would provide basic information about the services that it provided the previous year. Based on the services the responding carrier reported, the schedule would inform the carrier which other schedules, if any, the carrier would be required to complete.

14 Proposed Schedules 2 and 3 would require carriers to submit information on IMTS and seek country-by-country traffic and revenue information. Schedule 2 will require carriers to provide the information on "outbound" IMTS traffic, whereas Schedule 3 will require carriers to provide the information on "inbound" IMTS traffic. Under Schedule 2, carriers would report, country-by-country, their minutes of outbound IMTS, their revenues, and their payouts to foreign telecommunications organizations for terminating outbound traffic. The carrier would report the sum of all traffic that falls within the definition of "U.S. Customer Traffic" and within the definition of "Other U.S.-Billed traffic."

15 Proposed Schedule 3 would require carriers to report, on a country-by-country basis, the number of inbound minutes of IMTS they receive from their overseas correspondents and the dollar amounts they receive for terminating that traffic. Also, carriers would be required to continue to separate the inbound traffic they receive under the traditional settlement arrangements from inbound traffic they receive under all other arrangements, such as ISR, hubbing, etc. The NPRM seeks comment on whether carriers should be required to provide world-total data, such as the number of collect calls and associated minutes placed to foreign countries.

16 Proposed Schedule 4 would require carriers to provide IMTS minutes and revenues for three major market segments on a world-total (rather than country-by-country) basis. When reporting this information, carriers would be required to provide separate data for country direct, country beyond, and traditional transit. Carriers would separate traffic handled for foreign telephone operators from U.S.-customer traffic, and would divide U.S.-customer traffic between service provided to end-users and service provided to U.S. resellers.

17 Proposed Schedule 5 would require pure resale carriers with over \$5 million in revenue from international services to report their U.S.-customer minutes and revenues separately for residential and small business users; large business users; and other pure resellers.

18 Proposed Schedule 6 would require carriers to provide country-by-country information on their international private-line services. Carriers would be required to report separately service provided over facilities they own and service provided over resold circuits. Carriers would report the revenues they derive from providing data services over facilities they lease from another carrier (facilities-resale). The NPRM seeks comment on whether to add additional reporting breakouts.

19 Proposed Schedule 7 would require carriers to provide information regarding miscellaneous services for which they had over \$5 million in revenue the preceding year. Services other than IMTS and private-line service would be considered miscellaneous services. Carriers would be required to provide a minimal amount of information on the new services,

²¹ CORES is a web-based, password-protected, registration system that assigns a unique 10-digit FCC Registration Number (FRN) for use when doing business with the FCC. See *New Commission Registration System (CORES) to be Implemented July 19*, Public Notice, 15 FCC Rcd 18754 (2000).

such as the name of each service and the total annual revenues the carriers derived from the service.

20 Proposed Schedule 8 would require carriers to provide a snapshot of their active and idle circuits as of December 31st of each year. Carriers would be required to report their circuit capacity on the basis of the type of facilities they use to provide service – submarine cables, satellites, and terrestrial links. Carriers would be required to report their circuit use in units of 64 Kilobit per second (Kbps) equivalent circuits. The NPRM seeks comment on whether this information should be reported on a different capacity unit, and if so, how should it be allocated. Also, the NPRM seeks comment on whether carriers should be required to provide idle satellite capacity by country and mobile satellite circuits.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

21 The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards, and (4) an exemption from coverage or the rule, or any part thereof, for small entities.”²²

22 The NPRM seeks comment on a number of proposals to simplify and consolidate the reporting requirements for carriers providing international telecommunications services. The proposals in the NPRM are designed to reduce the regulatory requirements for both small and large carriers, while maintaining and enhancing the goals the reports serve. The Commission will also consider other additional significant alternatives developed in the record.

23. The possible change to the reporting requirements with the most significant impact on small carriers is the proposal to exempt pure resale carriers with less than \$5 million in revenues from international services the preceding year from filing reports. Based on the number of carriers filing the annual traffic and revenue report in 2002, the majority of carriers would be considered small carriers.²³ This proposal would benefit a substantial number of small entities by relieving them from certain reporting requirements.

24. The NPRM proposes to simplify the information that the carriers, both small and large, must submit for any traffic and revenue reports. First, the NPRM proposes to eliminate the requirement that carriers provide information on the number of messages that they carried the previous year. Second, the NPRM proposes to eliminate the requirement that carriers use the billing codes set out in the *Section 43.61 Filing Manual* and the Public Notices. Currently, carriers report international telephone traffic under 12 different billing codes, and the various

²² 5 U.S.C. § 603(c)(1)-(c)(4)

²³ See FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, “2002 International Telecommunications Data” at page 1, Statistical Findings (March 2004). FCC website location <http://www.fcc.gov/wcb/iatd/intl.html>

billing codes have presented recurrent problems for carriers filing the reports as well as those who review the reports. Third, the NPRM proposes a set of schedules for the reporting of the traffic and revenue and circuit-status information in lieu of the two filing manuals that are currently used. The Notice proposes to streamline some of the reporting categories, which will reduce the reporting requirements on both small and large entities.

25 The NPRM proposes to consolidate sections 43.61 (traffic and revenue reporting requirement) and 43.82 (circuit-status reporting requirement) into one rule. Consolidating the rules will eliminate the requirement that carriers file two separate reports – one for traffic and revenue data and one for circuit-status data. The Notice proposes that one filing manual be developed that will satisfy the reporting requirements of the new rule. One consolidated filing manual for both reports would be less confusing and less time-consuming for both small and large carriers.

26 The NPRM also proposes to require carriers to file the report earlier than currently required in order to improve the timeliness of the resulting report. In selecting a proposed filing date, the Commission tried to balance the need for more expeditious filing with any burden an earlier filing would place on carriers. In addition, with more timely-filed data, it would be unnecessary for carriers to file corrected traffic and revenue data. The proposed new filing date minimizes any burden on the carriers because it does not coincide with any other reporting requirements. Also, carriers will not be burdened with filing another report with corrected data.

27 The NPRM seeks comment on whether it would significantly speed and facilitate the submission of data if the Commission were to encourage or mandate carriers to submit their data electronically. Electronic filing would lessen the burden of filing the reports for both small and large carriers. Because carriers maintain the data electronically, it would be practicable for carriers to submit the data in the same format rather than convert the data into a different format.

28 The NPRM proposes a general report that will make it very simple for a carrier to determine which, if any, reporting requirements are applicable to the carrier. In addition, this proposal will simplify a carrier's compliance with other reporting requirements, such as the Form 499-A.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

29. None

APPENDIX B

PROPOSED RULE CHANGES

It is proposed that Parts 1, 43 and 63 of the Commission's rules be amended as follows:

PART 1 – PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e)

2. Remove § 1.789

PART 43 – REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

- 3 The authority citation for Part 43 continues to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Pub. Law 104-104, sec. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted. 47 U.S.C. 211, 219, 220, as amended

4. Remove § 43.53.

- 5 Section 43.61 is amended to read as follows:

§ 43.61 Reporting requirements for U.S. international carriers.*(a) Annual Traffic and Revenue Reports*

Each carrier engaged in providing international telecommunications service between the area comprising the continental United States, Alaska, Hawaii, and off-shore U.S. points and any country or point outside that area shall file a report with the Commission not later than May 1 of each year showing traffic and revenue for international services provided in the preceding calendar year

(b) Quarterly Traffic Reports for facilities-based carriers

(1) Each common carrier engaged in providing international telecommunications service between the area comprising the continental United States, Alaska, Hawaii, and off-shore U.S. points and any country or point outside that area shall file with the Commission, in addition to the report required by paragraph (a) of this section, actual traffic and revenue data for each calendar quarter in which the carrier's quarterly minutes exceed the corresponding minutes for all carriers by one or more of the following tests.

(i) The carrier's aggregate minutes of facilities-based or private-line resale switched telephone traffic for service billed in the United States are greater than 1.0 percent of the total of such minutes of international traffic for all U.S. carriers published in the Commission's most recent § 43.61 annual report of international telecommunications traffic;

(ii) The carrier's aggregate minutes of facilities-based or private-line resale switched telephone traffic for service billed outside the United States are greater than 1.0 percent of the total of such minutes of international traffic for all U.S. carriers published in the Commission's most recent § 43.61 annual report of international telecommunications traffic;

(iii) The carrier's aggregate minutes of facilities-based or private-line resale switched telephone traffic for service billed in the United States for any foreign country are greater than 2.5 percent of the total of such minutes of international traffic for that country for all U.S. carriers published in the Commission's most recent § 43.61 annual report of international telecommunications traffic; or

(iv) The carrier's aggregate minutes of facilities-based or private-line resale switched telephone traffic for service billed outside the United States for any foreign country are greater than 2.5 percent of the total of such minutes of international traffic for that country for all U.S. carriers published in the Commission's most recent § 43.61 annual report of international telecommunications traffic.

(2) Except as provided in this paragraph, the quarterly reports required by paragraph (b)(1) of this section shall be filed in the same format as, and in conformance with, the filing procedures for the annual reports required by paragraph (a) of this section.

(i) Carriers filing quarterly reports shall include in those reports only their provision of switched, facilities-based telephone service and switched, private-line resale telephone service.

(ii) The quarterly reports required by paragraph (b)(1) of this section shall be filed with the Commission no later than April 30 for the prior January through March quarter; no later than July 31 for the prior April through June quarter; no later than October 31 for the prior July through September quarter; and no later than January 31 for the prior October through December period

(c) Quarterly Traffic Reports for resale carriers

Each common carrier engaged in the resale of international switched services that is affiliated with a foreign carrier that has sufficient market power on the foreign end of an international route to affect competition adversely in the U.S. market and that collects settlement payments from U.S. carriers shall file a quarterly version of the report required in paragraph (a) of this section for its switched resale services on the dominant route within 90 days from the end of each calendar quarter. Commercial Mobile Radio Service (CMRS) carriers, as defined in § 20.9, are not required to file reports pursuant to this paragraph.

(d) Circuit status reports

Each facilities-based carrier engaged in providing international telecommunications service between the area comprising the continental United States, Alaska, Hawaii, and off-shore U.S. points and any country or point outside that area shall file a circuit status report with the Commission not later than May 1 each year showing the status of its circuits used to provide international services as of December 31 of the preceding calendar year.

(e) Filing Manual

The information required under this section shall be furnished in conformance with the instructions and reporting requirements prepared under the direction of the Chief, International Bureau, prepared and published as a filing manual.

(f) *Definitions*

(1) Two entities are *affiliated* with each other if one of them, or an entity that controls one of them, directly or indirectly owns more than 25 percent of the capital stock of, or controls, the other one.

Also, a U.S. carrier is *affiliated* with two or more foreign carriers if the foreign carriers, or entities that control them, together directly or indirectly own more than 25 percent of the capital stock of, or control, the U.S. carrier and those foreign carriers are parties to, or the beneficiaries of, a contractual relation (e.g., a joint venture or market alliance) affecting the provision or marketing of international basic telecommunications services in the United States.

(2) *Facilities-based carrier* means a carrier that holds an ownership, indefeasible-right-of-user, or leasehold interest (other than a lease of a private line circuit from another common carrier) in the U.S. end of an international facility, regardless of whether the underlying facility is a common carrier or non-common carrier submarine cable, a satellite system or any other facility.

(3) *Foreign carrier* is defined as any entity that is authorized within a foreign country to engage in the provision of international telecommunications services offered to the public in that country within the meaning of the International Telecommunication Regulations, see Final Acts of the World Administrative Telegraph and Telephone Conference, Melbourne, 1988 (WATTC-88), Art. 1, which includes entities authorized to engage in the provision of domestic telecommunications services if such carriers have the ability to originate or terminate telecommunications services to or from points outside their country.

6. Remove § 43.82

PART 63 – EXTENSION OF LINES, NEW LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

7. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201-205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201-205, 214, 218, 403, and 571, unless otherwise noted.

8. Section 63.09 is amended by revising paragraph (a) to read as follows:

(a) *Facilities-based carrier* means a carrier that holds an ownership, indefeasible-right-of-user, or leasehold interest (other than a lease of a private line circuit from another common carrier) in the U.S. end of an international facility, regardless of whether the underlying facility is a common carrier or non-common carrier submarine cable, a satellite system or any other facility.

9. Section 63.23 is amended by removing paragraph (e) and redesignating paragraph (f) as paragraph (e)